

Gilhooley



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tracor Marine, Inc.

File: B-234018

Date: April 21, 1989

DIGEST

1. Since an agency's cost realism analysis of a time and materials contract necessarily involves the exercise of informed judgment, the General Accounting Office will not disturb the results of that analysis unless it clearly lacks a reasonable basis.
2. An alleged "buy-in" (offering cost estimate less than anticipated costs with expectation of increasing costs during performance) by low-priced offeror furnishes no basis to challenge an award where agency knew the realistic estimated cost of contractor's performance before award and made award based on that knowledge.
3. Awardee's proposal is not objectionable as materially unbalanced where it represents lowest price to government for all lots.
4. An offeror's ability to meet its contractual obligations at the price offered is a matter of the firm's responsibility for the contracting agency to determine before award, and the General Accounting Office (GAO) will not review an affirmative determination in that respect except in limited circumstances. Whether awardee actually performs in compliance with contract requirements is a matter of contract administration not reviewable under GAO bid protest function.

DECISION

Tracor Marine, Inc. protests the award of a contract to General Offshore Corp. (GOC), under request for proposals (RFP) No. N00600-87-R-4426, issued by the Naval Regional Contracting Center, Washington, D.C. The RFP solicited ocean and marine engineering support services for naval ocean construction projects, and contemplated an indefinite quantity, time and materials contract with fixed labor rates

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for the described services. The contract was for a base year and two option years designated Lots I, II, and III. Tracor challenges the Navy's evaluation of the awardee's proposal.

We deny the protest in part and dismiss it in part.

The RFP advised that award would be made to the low, technically acceptable offeror. Offerors were required to submit separate technical and cost proposals. Offerors were advised that, if they proposed loadings (e.g. G&A) for support costs (e.g. logistics) specified in the schedule, they must indicate the type of loading, the rate and the amount. The amount of loading would be added to the respective support cost amount and used for evaluation of cost. The not-to-exceed amounts specified in the schedule would be revised upward upon contract award to reflect any/all allowable proposed loadings.

Only GOC and Tracor, the incumbent contractor, submitted proposals by the closing date. Both were found technically acceptable. After the RFP was revised to clarify that a normal workday at sea is based on 12 hours and additional hours constitute overtime, GOC and Tracor submitted best and final offers (BAFOs) of \$9,147,021 and \$9,265,066.41, respectively. The Navy determined that an organizational conflict of interest would prevent GOC from using its proposed subcontractor, and requested a second round of BAFOs to permit GOC to submit a revised proposal with a different subcontractor. GOC and Tracor submitted revised, technically acceptable BAFOs for \$8,948,547 and \$8,695,318.01, respectively. The contracting officer awarded the contract to Tracor as the lowest priced, technically acceptable offeror.

GOC protested the award to our Office, contending among other things, that the Navy either performed no price or cost analysis of Tracor's proposal, or that its analysis was materially flawed, and that the Navy either ignored the concept of cost realism or improperly applied it. Based on information received through a Freedom of Information Act request, GOC later amended its protest to allege that Tracor failed to burden support costs with G&A as required by the RFP.

The Navy determined that Tracor had not burdened support costs as required, and that certain wage determinations had inadvertently been omitted from the solicitation. The Navy notified our Office that it was settling the GOC protest by agreeing to cure an important omission through an amendment to the solicitation and by obtaining another BAFO. The

amendment incorporated an expanded set of wage determinations and changed a labor category from oceanographer to naval architect, requiring a change in the technical proposal with associated resume. The amendment also provided that a cap would be placed on the G&A rates to be paid during the life of the contract for Logistic Support Services and Travel, and that offers would be evaluated for cost realism, including the realism of labor and burden rates. While the labor rates were fixed priced, G&A rates were on a cost reimbursable basis.

Specifically, the contract clause entitled "G&A CAP FOR LOGISTICS SUPPORT AND TRAVEL," provided that:

" . . . this contract incorporates a cap on the allowable and allocable rate for G&A for all years of this contract on the following categories: Logistic Support and Travel. This cap was a condition of the RFP to prevent a buy-in from offerors bidding low and unrealistic G&A on these traditional cost reimbursable areas. Following award, the contractor can only bill G&A at the actual G&A rate up to the rate specified in schedule B of each LOT. . . ."

The contract clause entitled "COST REALISM" provided that:

"Offers will be evaluated for cost realism, including the realism of labor and burden rates. Unrealistically low rates will be considered in the assessment of technical and/or price proposals. Unrealistically low rates may lead to adjustments in technical and price evaluations."

GOC and Tracor submitted revised, technically acceptable BAFOs. The Navy conducted a cost realism analysis, determined GOC's costs were realistic, and awarded a contract to GOC as the lowest priced, technically acceptable offeror, for \$7,592,804.

Tracor protests that the Navy failed to apply the RFP's provision on cost realism in evaluating proposals, and awarded to an offeror who bought into the contract by submitting unrealistic rates. Principally, Tracor objects to the Navy accepting GOC's proposed G&A amount for Logistics Support Services for Lot 1. GOC had estimated a projected G&A rate for those services which would be a ceiling rate for reimbursement purposes, and in addition to this ceiling rate, offered a voluntary dollar ceiling. Tracor objects that the Navy had no reasonable basis to determine that GOC's proposed G&A dollar ceiling was

realistic because GOC's actual G&A rate and Tracor's actual and offered rates were in effect much higher than the proposed dollar ceiling. Tracor further contends that the Navy failed to evaluate GOC's burden rates.

The purpose of a cost realism evaluation by an agency under a time and materials type contract is to determine the extent to which the offeror's proposed labor rates and other costs are realistic and reasonable. Since an evaluation of this nature necessarily involves the exercise of informed judgment, the agency clearly is in the best position to make this cost realism determination and, consequently, we will not disturb such a determination absent a showing that it was unreasonable. Carrier Joint Venture, B-233702, Mar. 13, 1989, 89-1 CPD ¶ ____.

We have reviewed the Navy's cost realism evaluation here in light of Tracor's allegations and find that the results reached were reasonable. Initially, we note that an agency is not required to conduct an in-depth analysis or to verify each item in conducting a cost realism analysis. Ferguson-Williams, Inc., et al., B-232334, et al., Dec. 28, 1988, 88-2 CPD ¶ 630. The Navy's analysis here involved four steps. First, the Navy compared GOC's labor rates to Tracor's rates and identified GOC's rates that were significantly lower than Tracor's. Next, the Navy compared those rates without any indirect cost burdens to ascertain whether the price differences were based on Tracor having higher indirect rates or GOC proposing unrealistic direct labor rates. For example, the Navy noted that GOC proposed a project engineer at a lower labor rate than Tracor, but that the difference was due to Tracor's inclusion of overhead and G&A rates in the base labor rate that were significantly higher than GOC's. Finally, the Navy examined the price escalation the offerors proposed in the option years and compared the labor rates for labor categories covered by the Service Contract Act to the wage determinations provided by the Department of Labor (DOL). The Navy noted that although GOC did not propose any escalation in the option years for the professional labor categories, GOC's rates for work performed under the Service Contract Act met or exceeded the DOL wage determinations.

Though Tracor objects to the Navy's acceptance of GOC's self-imposed dollar ceiling on G&A costs reimbursable for Logistic Support Services for Lot 1, the record indicates that despite this self-imposed cap, the Navy evaluated GOC's G&A rate both at the self-imposed dollar cap and the rate stated for Lot 1. Since this rate was capped and thus was the actual maximum rate which the government would pay, no

upward adjustment of this rate was necessary. See Support Systems Assocs., Inc., B-232473 et al., Jan. 5, 1989, 89-1 CPD ¶ 11. Under either alternative, the Navy determined GOC would still have the lowest priced offer.

To the extent that Tracor contends that GOC attempted to "buy-in" by submitting a below-cost proposal, we have held that an alleged "buy-in" (offering cost estimate less than anticipated costs with expectation of increasing costs during performance) by a low-priced offeror furnishes no basis to challenge an award where, as here, the agency knows the estimated cost of the contractor's performance before award and makes award based on that knowledge. PTI Environmental Services, B-230070, May 27, 1988, 88-1 CPD ¶ 504.

Tracor, in comments on the agency report, couches its protest in terms of an allegation that GOC's offer is unbalanced because of its varying G&A rates for Logistics Support Services for different lots. However, GOC's offer cannot be held to be materially unbalanced so as to preclude its acceptance, because it was evaluated low in all lots, and thus acceptance of GOC's offer will ultimately result in the lowest cost to the government irrespective of the point at which the contract may eventually expire. See Kitco, Inc., B-221386, Apr. 3, 1986, 86-1 CPD ¶ 321.

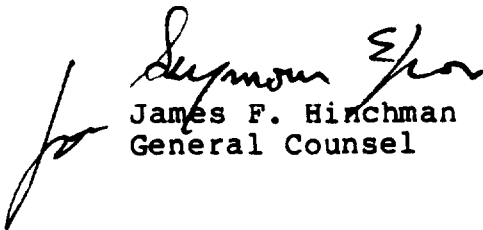
Tracor also alleges that the Navy did not conduct a technical evaluation of GOC's BAFO, but instead relied upon an earlier evaluation. The record indicates, however, that an evaluation team from the Chesapeake Division of the Naval Facilities Engineering Command reviewed the BAFO and found it technically acceptable. The only technical change to GOC's offer was the submission of three resumes for the Naval architect position added by amendment five. Amendment five required the submission of one resume for that position and also required a minimum of 10 years experience. GOC proposed two individuals with the required experience, and one of its staff naval architects with 9 years of experience. The latter individual would not perform any work in the base year, but would perform in the 2nd and 3rd option years after acquiring the additional year of experience to meet the requisite 10 years of experience. The record indicates that the Navy also evaluated this change to GOC's offer as part of its cost realism analysis.

Tracor also questions whether GOC can or will devote the resources necessary to successful performance of the contract. In our view, these allegations relate to the question of GOC's responsibility. Here, the contracting officer has made an affirmative determination of GOC's

responsibility which our Office will not review absent a showing that the determination may have been made fraudulently or in bad faith or that definitive responsibility criteria were not met. 4 C.F.R. § 21.3(f)(5) (1988); Trak Engineering, Inc., B-231791, Oct. 28, 1988, 88-2 CPD ¶ 402. Neither exception is alleged here. Furthermore, whether GOC actually complies with its contractual obligations is a matter of contract administration that is not reviewable under our bid protest function. 4 C.F.R. § 21.3(m)(1). This aspect of Tracor's protest is therefore dismissed.

Finally, Tracor claims it is entitled to recover the costs of filing and pursuing its protest as well as its proposal preparation costs. Since we find Tracor's protest to be without merit, there is no basis upon which to find an entitlement to recovery of these costs. 4 C.F.R. § 21.6(d).

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel